

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

INTERNATIONAL FIDELITY INSURANCE)	
COMPANY,)	
)	Case No. 3:12-CV-37
Plaintiff,)	
v.)	
)	
SOLUTIONS TO EVERY PROBLEM, INC.,)	
BASIL A. SKELTON, JEFFREY L. WOOD,)	
IDA SALISA WOOD, NICKAJACK)	
PROPERTIES, LLC, and)	
COOL SPORTS, LLC)	
)	
Defendants.)	

**AFFIDAVIT OF FRANK TANZOLA IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

COMES NOW the Affiant, Frank Tanzola, having been duly sworn and makes oath as follows:

1. I am employed as Senior Vice President & Chief Legal Officer for the Plaintiff, International Fidelity Insurance Company ("International Fidelity"). In that capacity, I am a custodian of records relating to and possess knowledge relating to the allegations asserted in International Fidelity's Complaint for Indemnity and Equitable Relief against Defendants Solutions to Every Problem, Inc. ("STEP"), Basil A. Skelton (individually and in his capacity as the trustee of Basil A. Skelton's Living Trust), Jeffrey L. Wood, Ida Salisa Wood, Nickajack Properties, LLC, and Cool Sports, LLC (Mr. Skelton, Mr. Wood, Ms. Wood, Nickajack Properties, LLC, and Cool Sports, LLC collectively, the "Indemnitors").

2. STEP and the Indemnitors executed the Agreement of Indemnity attached hereto as **Exhibit 1** (the “Indemnity Agreement”) as an inducement of International Fidelity’s issuance of surety bonds on behalf of STEP.

3. Induced by and in consideration of STEP’s and the Indemnitors’ execution of the Indemnity Agreement, International Fidelity issued the Performance-Payment Bond attached hereto as **Exhibit 2** (the “Bond”) on behalf of STEP in the penal sum of \$3,299,036.06. The Bond relates to a contract (the “Bonded Contract”) between STEP and Dalewood Estates Senior Housing, Inc. (“Dalewood”) for the construction of a senior housing community in Albany, Georgia. Dalewood and a number of STEP’s subcontractors and suppliers have asserted claims against International Fidelity under the Bond.

4. Specifically, after a number of disputes arose between STEP and Dalewood during the life of the Bonded Contract, Dalewood deemed STEP to be in default and formally terminated the Bonded Contract on January 26, 2011. Upon information and belief, representatives of Dalewood and local law enforcement officers in Albany, Georgia also escorted STEP’s employees off of the project site on January 26, 2011. Dalewood subsequently asserted a claim against International Fidelity under the Bond and sought recovery of, *inter alia*, the cost to complete STEP’s unfinished work under the Bonded Contract, liquidated damages, and lost income. Hatcher Tractor Service (“Hatcher”), Select Tel Systems, Inc. (“STS”), and Pressley’s Electric Service, Inc. (“PES”), who were among STEP’s subcontractors/suppliers under the Bonded Contract, also asserted claims against the Bond and each filed suit against International Fidelity and STEP. In their respective lawsuits, Hatcher sought to recover in excess of \$104,501.58, STS sought to recover in excess of \$23,376.24, and PES sought to recover in excess of \$52,876.05 from International Fidelity under the Bond.

5. In anticipation of potential litigation with Dalewood, STEP's subcontractors/suppliers, and/or STEP and the Indemnitors, International Fidelity retained construction consultant Gary Bierhalter of Bierhalter & Associates, Inc. in April of 2011 to assist in International Fidelity's independent investigation of the various claims that were asserted against International Fidelity under the Bond. On numerous occasions, International Fidelity and/or its consultant requested information from STEP and the Indemnitors relative to those claims, but International Fidelity only received small portions of the information it requested. At this juncture, International Fidelity has settled some of the claims that were asserted against it, but International continues to face substantial exposure under the Bond.

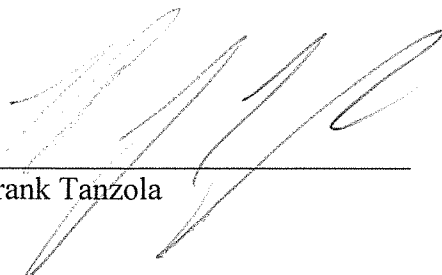
6. For example, at STEP's request, and as reflected by the June 10, 2011 letter attached hereto as **Exhibit 3**, International Fidelity tendered payment in the amount of \$91,556.46 to STEP's attorney to fund the settlement of Hatcher's claim against the Bond. STEP later used those funds to settle Hatcher's claim against the Bond, and the Hatcher Lawsuit was ultimately dismissed with prejudice. International Fidelity has tendered payment in the amount of \$31,859.01 to PES to partially resolve PES's claim against International Fidelity under the Bond, but PES's lawsuit has not yet been dismissed. After months of International Fidelity's investigation of Dalewood's claim against the Bond, International Fidelity and Dalewood ultimately entered into a Takeover Agreement dated November 21, 2011, a copy of which is attached hereto as **Exhibit 4** (the "Takeover Agreement"). As more fully set forth in the Takeover Agreement, International Fidelity has elected, pursuant to Paragraph SIXTH of the Indemnity Agreement, to utilize Bob Martin of CEM Enterprises ("CEM") and one or more of STEP's subcontractors and/or suppliers to complete a negotiated scope of work (the "Remaining

Work”) in fulfillment of International Fidelity’s duties and obligations to Dalewood and HUD under the Bond.

7. At this juncture, International Fidelity is utilizing CEM and one or more of STEP’s subcontractors and/or suppliers to complete the Remaining Work pursuant to the Takeover Agreement. The STS Lawsuit remains unresolved, and International Fidelity continues to face exposure to STS under the Bond. Based upon the foregoing, International Fidelity established a total reserve of \$427,556.46 relative to the claims that Dalewood, Hatcher, STS, and PES have asserted against the Bond.

8. As reflected by the December 5, 2011 letter attached hereto as **Exhibit 5**, International Fidelity previously demanded that STEP and the Indemnitors deposit collateral with International Fidelity in the amount of \$336,000, which sum did not include the \$91,556.46 payment that International Fidelity advanced to STEP to settle Hatcher’s claim against the Bond. However, despite International Fidelity’s demand, neither STEP nor the Indemnitors have deposited any collateral with International Fidelity. To date, International Fidelity has paid \$343,518.74 in losses and/or expenses under the Bond, and International Fidelity anticipates that it could incur an additional \$110,996.40 in losses and expenses under the Bond (exclusive of the cost and expenses associated with this action).

Further Affiant saith not.



Frank Tanzola

STATE OF NEW JERSEY
COUNTY OF ESSEX

On this 12th day of April in the year 2012, before me Frank Tanzola, a Notary Public in and for said state, personally appeared Frank Tanzola, known to me to be the person who executed the within Affidavit and acknowledged to me that he executed the same for the purposes therein stated.



Notary Public

MARIA H. BRANCO
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires May 13, 2013